



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0344]

RIN 1625-AA11

Regulated Navigation Area; Vessel Traffic in vicinity of
Marseilles Dam; Illinois River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) on the Illinois River. This Temporary Final Rule stipulates operational requirements and places navigational and operational restrictions on all vessels transiting the Illinois River from Mile Marker 240.0 to Mile Marker 271.4. This RNA is necessary to protect the general public, vessels, and tows from the hazards associated with obstructions in the Marseilles Lock canal, recovery efforts related to the restoration of the Marseilles Dam, and salvage operations being conducted in its vicinity.

DATES: This rule will be enforced with actual notice from May 4, 2013, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until June

30, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0344. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414-747-7148 or Joseph.P.McCollum@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule
RNA	Regulated Navigation Area

A. Regulatory History and Information

On April 18, 2013, in light of dangerously high water

conditions, the Coast Guard established a temporary safety zone on the Illinois River from Mile Marker 187.2 to Mile Marker 285.9 (USCG-2013-0299). The safety zone restricted recreational and commercial vessel transit in the zone without the permission of the Captain of the Port Lake Michigan. The safety zone was effective and enforced from April 18 to 30, 2013. Because of the emergent nature of the flooding, the Coast Guard did not solicit comments before establishing this temporary safety zone.

On April 26, 2013, in order to facilitate commerce and in consideration of salvage operations around the Marseilles Dam, the Coast Guard established a temporary safety zone (USCG-2013-0323) that authorized commercial vessels to transit the Illinois River except from Mile Marker 244 to Mile Marker 252. Recreational vessels were prohibited from Mile Marker 187.2 to 285.9. Because of the emergent nature of the flooding, the Coast Guard also did not solicit comments prior to establishing this temporary safety zone.

On April 29, 2013, the Coast Guard issued a third TFR that established a safety zone from Mile Marker 231.0 to Mile Marker 271.4 on the Illinois River (USCG-2013-0334). This safety zone restricted vessel traffic within the portion of the Illinois River deemed to be affected by both salvage operations and the potential for structural failure at the Marseilles Dam.

Now, the Coast Guard is issuing this rule without prior notice and opportunity to comment pursuant to authority under

section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard is issuing this rule in response to an immediate and emergency situation that involves salvage and port recovery operations in the vicinity of the Marseilles Lock and Dam. Delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect persons and vessels from the hazards, which are discussed further below, associated with the salvage and port recovery operations in the vicinity of the Marseilles Lock and Dam.

Although the Coast Guard is issuing this rule without prior notice and opportunity to comment, the Coast Guard consulted with towing vessel industry stakeholders to help determine the tow restrictions and operating parameters in this RNA.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons

discussed in the preceding paragraph, waiting for 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish RNAs and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Heavy and extended periods of rain during the first half of the month of April resulted in dangerously high waters within the Illinois River, bringing excessive debris, rapidly-flowing water, and complicating vessel navigation. These high and rapidly-moving waters also threatened to damage critical infrastructure including river levees.

On April 18, 2013, seven barges broke loose from their tow during an approach to the Marseilles Lock canal and lodged against the Marseilles Dam. Salvage operations are underway to recover the barges and structural surveys of the dam are being conducted.

On April 29, 2013, the U.S. Army Corps of Engineers released Navigation Notice IW 13-12 declaring lock restrictions for vessel traffic between mile markers 231.0 to 271.4 except for those vessels assisting in the salvage operation or the dam recovery efforts at Marseilles Dam. Currently, both commercial and

recreational vessels remain within portions of the Illinois River, which could either be affected by the failure of the Marseilles Dam or could impede the salvage operations at work there.

In an effort to ensure the safety of all vessels that might be either affected by the failure of the Marseilles Dam or could impede the salvage operations being conducted, the Ninth District Commander is issuing this rule. Once this RNA is put into effect, the enforcement of the temporary safety zones discussed previously will be suspended.

The Coast Guard's Ninth District Commander has established the restrictions, stipulations, and directions named within this regulation in response to the safety risks presented by the high water conditions, the potentially compromised dam, and ongoing salvage operations. The safety risks associated with these conditions include loss of vessel control, sinking, swamping, collisions, and allisions.

C. Discussion of the Final Rule

The Coast Guard's Ninth District Commander has determined that an RNA is necessary to mitigate the aforementioned safety risks. Thus, this rule establishes an RNA that encompasses all waters of the Illinois River from the gates of the Dresden Lock and Dam at Mile Marker 271.4 to Mile Marker 240.0. This rule will place restrictions on vessels entering, transiting, moving within, or departing the waters within the regulated navigation

area.

In order to ensure the safety of those vessels and persons transiting the portion of the Illinois River that could be affected by obstructions in the waterway or salvage operations, restrictions will be in place from the gates of the Dresden Lock and Dam at Mile Marker 271.4 to Mile Marker 240.0 so that towing vessels must configure tows within designated parameters. Vessels may not transit under certain ambient weather and water conditions and without a minimum of 240 horsepower for every barge in the tow and an assist tug present. Also, towing vessels are not authorized to break up tows within certain portions of the River. Furthermore, vessels in transit must contact the Ninth District Commander's on-scene representative in order to proceed through the Marseilles Lock and Dam. This rule is effective and will be enforced from May 4, 2013, until June 30, 2013.

The Ninth Coast Guard District Commander will notify the public that this RNA is being enforced by all appropriate means, including publication in the Federal Register, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Ninth District Commander, the Captain of the Port Lake Michigan, or designated on-scene representative. Entry into, transiting, or anchoring within the RNA is prohibited unless

authorized by the Ninth District Commander, the Captain of the Port Lake Michigan, or a designated on-scene representative. The Ninth District Commander, the Captain of the Port Lake Michigan, and the designated on-scene representative may be contacted via VHF Channel 16, at (630) 336-0300, or by contacting the Coast Guard Sector Lake Michigan Command Center at (414) 747-7182.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and

will not raise any novel legal or policy issues. The regulated navigation area created by this rule will be limited in scope and enforced for just two months. Under certain conditions, moreover, vessels may still transit through the regulated navigation area when permitted by the Ninth District Commander.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of the Illinois River during the time that this zone is enforced. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: this RNA will be effective, and thus subject to enforcement, for just two months. Traffic may be allowed to pass through the RNA with the appropriate authority. Before the enforcement of the zone, the

Coast Guard will issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so they can better evaluate its effects on them. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or

otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a regulated navigation area, and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0344 to read as follows:

§ 165.T09-0344 Regulated Navigation Area; Vessel Traffic in vicinity of Marseilles Dam; Illinois River.

(a) Location. All waters of the Illinois River from the gates of the Dresden Lock and Dam at Mile Marker 271.4 to Mile Marker 240.0.

(b) Effective and Enforcement Period. This rule is effective and will be enforced from May 4, 2013, to June 30, 2013.

(c) Regulations. (1) All vessels are prohibited from entering, transiting, or anchoring within this regulated navigation area (RNA) unless authorized by the Ninth District Commander, the Captain of the Port Lake Michigan, or a designated representative at (630) 336-0300.

(2) Vessels transiting within the RNA with tow must have:

(i) A minimum of 240 horsepower for every barge in the tow.

(ii) A minimum of 1000 feet of visibility.

(iii) An assist tug arranged for passage past the sunken barge at the east entrance to the Marseilles Lock Canal.

(iv) Tow configurations made out to no more than 2 barges wide and 4 barges long.

(v) Tow dimensions of less than 70 feet in width and 800 feet in length. These dimensions do not include the towing vessel.

(vi) Make way with at least 2 mph speed of advance for the entire transit from Mile Marker 246 to Mile Marker 250.

(3) Vessels transiting the RNA with tow are prohibited from breaking tows between Mile Marker 240.6 to Mile Marker 244.4 and between Mile Marker 246 to Mile Marker 250.

(4) Vessels transiting the RNA are prohibited from making way when under the following conditions:

(i) Wind speeds exceeding 25 mph.

(ii) The flow rate of the Illinois River at the Marseilles Dam exceeds 23,000 CFS.

(5) Vessels must contact the Ninth District Commander's on-scene representative at (630) 336-0300 prior to processing through Lock and Dams within the RNA as follows:

(i) Northbound vessels must contact the Ninth District Commander's on-scene representative at (630) 336-0300 1 hour prior to anticipated lockage at Marseilles Lock and Dam. A secondary contact to the Ninth District Commander's on-scene representative must be made prior to Mile Marker 240.6 to obtain a lockage authorization code.

(ii) Southbound vessels must contact the Ninth District Commander's on-scene representative at (630) 336-0300 1 hour prior to anticipated lockage at Marseilles Lock and Dam. A

secondary contact to the Ninth District Commander's on-scene representative must be made prior to Mile Marker 250 to obtain a lockage authorization code.

(6) Vessel operators given permission to enter, operate, or transit within the regulated navigations area must comply with all directions given to them by the Ninth District Commander, Captain of the Port, Lake Michigan, or a designated on-scene representative. The "on-scene representative" of the Ninth District Commander will be standing watch at the Marseilles Lock and is any Coast Guard commissioned, warrant or petty officer who has been designated by the Ninth District Commander to act on his behalf.

(d) Exceptions. (1) Vessels with tow transiting northbound through the RNA may break their tow beyond Mile Marker 250.

(2) Vessels with tow transiting southbound through the RNA may break their tow beyond Mile Marker 240.6.

(e) Exemptions. Public vessels, defined in 46 USC 2101(24) as vessels that are owned, or demise chartered, and operated by the United States Governemnt or a government of a foreign country; and are not engaged in commercial service, are exempt from the requirements in this section.

(f) Waiver. For any vessel, the Ninth District Commander or the Captain of the Port Lake Michigan may waive the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(g) Notification. In keeping with 33 CFR 165.7(a), the Ninth District Commander will notify the public of the enforcement of this RNA by all appropriate means, including publication in the FEDERAL REGISTER. Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

Dated: May 3, 2013

M.N. Parks
Rear Admiral, U. S. Coast Guard
Commander, Ninth Coast Guard District

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Date: 06/07/2013]